

I, Walter L. Wagner, affirm state and declare under penalty of perjury of the laws of the State of Hawai'i as follows:

1. This matter was originally filed in 2004 as a means of protecting myself in the event the new management team to headed by Kenneth Francik led the company astray. Regrettably, such has occurred as that management team has worked primarily for its own interests, and against the interests of the WBGI shareholders, engaging in numerous breaches of contract and torts in the process. This mismanagement has resulted in the liquidation of 90% of WBGI's original land holdings, enriching selected individuals in that management team while depriving the WBGI shareholders and myself of our investments and assets. This scam to steal the assets of WBGI from myself and other investors in WBGI has led to serious difficulties for the gardens, which are reflected in the accompanying *Exhibit "B"*.

2. There is currently pending in US District Court, District of Utah, my civil action for tort damages against WBGI and certain members of its current board of directors, and for appointment of a Receiver, which civil action is entitled *Wagner v. Michie, WBGI, et al.*, Civil No. 2-11cv00784.

3. In that federal action three persons have filed sworn affidavits regarding facts involving WBGI, namely myself, original co-founder and shareholder Cal Andrus, and early shareholder Dan Perkins. There were no opposing affidavits of any form filed by the defendants. There was no presentation of any form of facts in opposition to the facts set forth in those affidavits. Those affidavits filed by myself and two others were filed for the purpose of having a Receiver appointed to handle the affairs of WBGI, which have been greatly mismanaged by the named defendants. The Receiver that is being requested for appointment (Cal Andrus) is one of the original WBGI founders (circa 1994) and original shareholders, and he intends to appoint corporate counsel that will readily resolve the instant action, the pending federal action, as well as other actions currently pending involving WBGI. All of those actions on the part of WBGI and its current board of directors (Kenneth Francik Board) have proven to serve no legitimate purpose and are seriously detrimental to the WBGI garden and its shareholders, even though enriching certain selected individuals with the continuing liquidation of WBGI assets which I had amassed for the shareholders over the course of a decade (1994 to 2004).

4. The affidavits in that pending federal action set forth uncontested facts by those three persons, which I have detailed below. This summarization of facts from those uncontested sworn affidavits set forth:

a. I maintain a 12.5% ownership interest in WBGI, notwithstanding the criminal fraud in the purported sell-off of my interest. (Defendants therein, which include WBGI, Kenneth Francik, Preston Michie et al., purport to have sold my share ownership in 2007 for 1/50th of the share value of 2004, and a few weeks later in 2007 to sell those same shares to other wbgi shareholders at an approximately 25-fold increase over their purported 'sale' price just weeks earlier).

b. Defendants in that federal suit had no right to purport to sell my shares because they owed me substantial sums as detailed in the instant case even though falsely claiming I was owed nothing, proclaiming they had to sell my shares to 'recover' monies they fraudulently claimed I owed.

c. Defendants engaged in extensive frauds in Nevada to obtain a monetary judgment after having agreed with judge Nakamura and myself to limit their Nevada case to solely a single governance issue and no monetary claims. That fraud included extensive lying by one Kenneth Francik in court, and wrongful exclusion of Tolman Board witnesses at trial. That sole governance issue was to determine whether the Francik board was properly constituted, which it was not, or whether the Tolman Board was the proper governing board of WBGI (which it was). That Nevada court subsequently erroneously directed the Francik Board, with no experience in Hawai'i, to direct the affairs of WBGI to the extreme detriment of both the WBGI shareholders, as well as the people of Hawai'i.

d. Defendants in that federal suit engaged in extensive fraud in Hawai'i in that case that they initiated in 2005 against myself and others (Civil 05-02079), heard before judge Nakamura. Those frauds included lying and misrepresentations concerning the "facts" they were alleging, as well as wrongful exclusion of our witnesses from a "trial" conducted before judge Nakamura. The wrongful exclusion was orchestrated by Kenneth Francik and included collusion with Judge Nakamura to arrest our chief witness at

the "trial" based on a warrant wrongfully issued two months earlier by Judge Nakamura, which warrant was procured by the lies and fraud of Kenneth Francik to a grand jury while under oath to tell the truth.

e. The defendants in that action have engaged in the willful and wanton destruction of the assets of WBGI, including the sell-off of 90% of WBGI's land-holdings to others at prices substantially below market value (and without public listing but by 'private placement') and for less than was paid for the purchase of the bare land, even though \$2,000,000 of shareholder funds (of an original \$4,000,000 investment on the part of the WBGI shareholders) had been used to improve the properties, which generated a huge windfall for the purchasers, two of whom were close friends of Kenneth Francik.

f. The defendants in that action have engaged in abandonment of most of the botanical garden development project, resulting in a poorly-maintained garden in the 10% of the land-holdings still retained, and destruction by neglect of much of the garden in the areas that were sold-off to others, except for certain parts subsequently revived by Cleo Carlile as detailed below.

g. The defendants in that federal action have spent in excess of \$700,000 on fraudulent litigations, stolen \$200,000 from a dedicated *Visitor Center Account* fund to help finance those fraudulent litigations, and falsely defamed myself by falsely claiming I stole that *Visitor Center Account* money, as a fraudulent cover-story to hide their crime, which money was actually stolen by them. Those acts left WBGI in a financially bankrupt condition due to those fraudulent expenditures.

h. The defendants in that federal action have forwarded those frauds across interstate lines, using interstate telephone and other wire systems, in violation of federal telecommunications fraud statutes.

i. As a result of those and other frauds, wastes and mismanagements of WBGI, the WBGI shareholders are now left with a 'shell' corporation of almost no financial value, rather than a viable corporation. Its financial value in 2004, prior to those frauds, exceeded \$10,000,000 following ten years of my development of WBGI (1994 to 2004).

j. The facts set forth in those affidavits further detail that the only hope for survival of the botanical garden is for appointment of the requested Receiver who has a plan in place to acquire \$1,000,000 of immediate funding upon termination of the many litigations that the current WBGI Board of Directors embroiled itself in almost immediately after its formation, which funding cannot be emplaced with the instant continuing litigations engendered by their numerous frauds.

4. In addition to the above uncontested facts, the facts of the tort actions of that federal complaint are likewise uncontested as set forth in those affidavits. The torts involve various acts of defamation, including the most serious act of defamation of defendants therein falsely claiming that I stole my own identity, and that my filing of the instant complaint in 2004 constituted a felony, specifically a fraudulent claim made by those defendants that the filing of the instant suit was an "attempted theft" based on their fraudulent claim that I was owed no money for developing WBGI over the course of ten years, notwithstanding extensive evidence of my work to the contrary, and therefore my filing of the instant action was an "attempt" to collect money they claimed I was not owed, and ergo an "attempted theft". Those frauds were initially falsely presented to a Hilo grand jury, by use of lying on the part of Kenneth Francik, who was the sole person appearing before that panel. Those frauds were likewise well-detailed in the uncontested sworn affidavits of that federal action. Those frauds were then presented to judge Nakamura in that then-pending civil action (Civ05-02079, *WBGI v Wagner*) that had been brought by the WBGI Kenneth Francik Board against myself. That fraud was used to arrest and remove our chief witness (Linda Wagner, WBGI's secretary and treasurer during the time periods at issue) from judge Nakamura's courtroom, and to remove myself as well (to post her bail), fraudulently allowing Kenneth Francik to produce his false testimony in that civil suit unopposed. Those frauds are now detailed, unopposed by any contrary affidavits of any form, in the pending federal action. Those affidavits also detail how Kenneth Francik was fired from the LAPD for lying under oath, and prosecuted by his former employers (LAPD and LA District Attorney) for such crimes.

5. In addition to the frauds that took place in the instant case filed in 2004, and the other Hawai'i case involving WBGI filed in 2005 (Civ05-02079), which are now detailed in the pending federal action, defendant WBGI also engaged in another tort fraud pertaining thereto. Those more recent facts are

likewise uncontested in the pending federal action. Specifically those sworn affidavits show that, after the frauds that resulted in an illegal arrest of myself, and following the dismissal of the fraudulent criminal charges, defendant WBGI and its board members published on the internet the false criminal complaint naming myself and Linda Wagner as defendants, which they knew to be false, as if it were true and pending rather than dismissed as was the case. This was done to stigmatize myself in the eyes of the WBGI shareholders (much as they have been attempting to stigmatize myself before this Court and before judge Nakamura with their fraudulent continuing claims of wrongdoing on my part), fueled in part by the payment of \$500,000 to Thomas Yeh using money stolen from the WBGI shareholders, as detailed in the pending federal action.

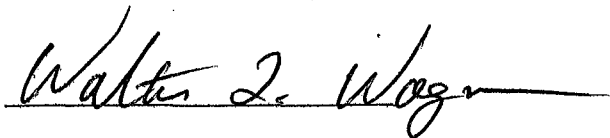
6. All of those frauds and other frauds have worked a heavy toll, not only on the financial well-being of WBGI and its shareholders, but on the botanical garden itself, which has been for all intents and purposes abandoned as to its original purpose as a major tourist destination and home for endangered species. As detailed in the pending federal action, WBGI through its Kenneth Francik Board of Directors sold off the 90-acre Umauma Falls overlook parcel to Cleo Carlile, who promptly turned it into a competing botanical garden attraction, complete with a major zip-line attraction (www.umaumaexperience.com). I spoke with Mr. Carlile on many occasions thereafter, and he detailed to me how he would take a crew with him into the abandoned areas of the garden (abandoned by the Francik Board), remove ten-foot-tall weedy grasses, exposing the abandoned young trees to sunlight, and saving them from certain death (as has occurred in many other areas of the garden abandoned by the Francik Board but not acquired by Mr. Carlile). As a consequence, those portions of the botanical garden that were developed on that 90-acre parcel are thriving, though not under WBGI management but under his (Mr. Carlile's Family-Trust's) management. Mr. Carlile and I had spent many hours walking together over those parcels circa 2004 to 2008, and I detailed to him the plans that had been underway, and which he continued under separate management. Regrettably, Mr. Carlile was elderly, and passed away last November 2012 in his late 70s, leaving his adult children to manage the Umauma Experience garden and zip-line.

7. As a direct and proximate result of the waste, fraud and mismanagements of the WBGI garden by the Francik Board and successors, the sell-off of the 90-acre Umauma Falls parcel to Mr. Carlile, and the sell-off of the 180-acre Rainforest parcel to a friend of Kenneth Francik (for well below market value and less than WBGI had paid for it before WBGI spent \$1,000,000 on improvements on it), the Visitor Experience for tourists who are expecting a wonderful Hawaiian experience at a tropical botanical garden has seriously declined. Attached herewith are *Exhibit "A"* and *Exhibit "B"*. *Exhibit "A"* contain visitor comments from circa 2004 to 2006, and are reflective of the state of the botanical garden when it still included the Umauma Falls as part of the tour, and reflective of the work plaintiff herein conducted in developing the botanical garden from 1995 to 2006. Conversely, *Exhibit "B"* is reflective of the current state of affairs after seven years (2006 to 2013) of waste, fraud, sell-off of the 90-acre Umauma Waterfall parcel and 180-acre Rainforest parcel, and mismanagement by the Francik Board, which board was put in place by their frauds on the courts.

8. As a consequence of the above referenced facts, and the facts given in greater detail that were uncontested in the pending federal suit naming WBGI, Kenneth Francik, et al. it is expected that the request for appointment of a Receiver to manage the affairs of WBGI will be granted, and that the appointed receiver will seek a proper resolution and settlement of both the instant action, as well as the pending federal action and other actions involving WBGI and myself without the necessity of a trial herein.

9. Accordingly, it is respectfully requested that this Court stay the current action pending resolution of the issues pending before the federal court, and its expected appointment of Cal Andrus as the Receiver placed in charge of the remaining WBGI assets, who will immediately seek a settlement of the instant case without necessity of a trial.

DATED: March 24, 2013

A handwritten signature in black ink, appearing to read "Walter L. Wagner", with a long horizontal flourish extending to the right.

Walter L. Wagner

EXHIBIT "A"
Visitor Comments circa 2004-2006

The following comments were copied verbatim from the WBGI website from circa 2004-2006 (the comments were placed there by the Kenneth Francik board), and are also typical of the types of comments WBGI received circa 1998 to 2004. (From 1995 to 1997 there were numerous negative comments from visitors relating primarily to the immaturity of the garden, which was founded in 1995 by plaintiff herein and his Board of Directors). These comments are reflective of the state of the gardens during the transition from the founder Board of Directors to the subsequent Boards (transition at September 2004 to the Kenneth Francik Board)

"Beautiful! Rare Collection!"

Bobby P., New York, NY

"Beautiful. A lot of love has gone into caring for this place."

Linda B., Park City, UT

"Very beautiful gardens and one of the most picturesque waterfalls I've ever seen."

Bernard M., Black Diamond, WA

"The falls are marvelous and the flowers in the Rain Forest are breathtaking!"

Brenda C., Statesville, NC

"Your falls are exquisite! I love your gardens and the variety you have. I will certainly visit again on our next trip to enjoy your progress. Your master plan is wonderful & inspirational. Good Luck!"

Don T., Roseville, MI

"I would recommend this activity to all. The garden and waterfalls was beautiful. The service representatives were extremely friendly and personable."

Renee H., Houston, TX

"Very nice grounds! The variety of plants & the layout of them is wonderful!!! Can't wait to come back to see how everything matures & especially the "Maze." The fall were better than I can describe!"

Jamie K., RSVL, MI

"It is a wonderful sightseeing tour with a high value."

Klaus A., Deckenpfronn, GER

"Very pretty, well worth the time and price. We just hope our pictures will do it justice."

Anon

"The service was great. The view of the waterfalls was breathtaking. The orchid wall was fantastic. The photos were unbelievable."

Michael P., Granada Hills, CA

"Very beautiful, unbelievable plants and views, well worth the time and money. Delicious fruit!"

Lisa S. Riverside, IA

"Very interesting. Can be the best garden in Hawaiian Islands. We'll be back in 3 years or so to see more progress."

Jack S., Huntington Beach, CA

EXHIBIT "B"

Visitor Comments circa 2010-2013

The following Visitor Comments are copied from the internet article entitled "*Reviews of World Botanical Gardens in Trip Advisor*" and were copied in March, 2013. I believe them to be fairly accurate representations of the current state of the gardens in 2013. This current state of fraud, waste and mismanagement is serving as the basis for appointment of a receiver in federal court. The Umauma Falls was discontinued as part of the WBG tour circa 2009 when the Francik board discontinued the lease arrangement after having allowed the land title to transfer to Cleo Carlile, who developed that 90-acre parcel, and the adjoining 90-acre parcel he'd purchased through me earlier, into Umauma Experience (www.umaumaexperience.com). A couple of the comments are from 2008 when Umauma Falls was part of the tour, and after only two years of neglect instead of the current seven years of neglect.

http://www.tripadvisor.com/Attraction_Review-g60581-d486997-Reviews-World_Botanical_Gardens-Hakalau_Island_of_Hawaii_Hawaii.html

"not up to the standards of hawaii tropical botanical garden"

Reviewed January 30, 2013

considering what was on offer for \$13 entry, it was an average experience... on Dec 24th morning, we drove through one mile of sharp gravel to see a small water falls-- we were scared our rented car might have a punctured tyre. there was also the sad sight of emaciated cattle on the adjoining farm---clearly the farmer is in dire state---the animals looked famished and added to the spoiling of our mood. then we had a muddy hike to see another small water falls and there was a square with trees. after visiting the lovely botanical gardens --ho'omaluhia, foster, lyon arboretum and Waimea valley --in Oahu, this was no great shakes. also the tropical botanical gardens inside the scenic 4 mile drive is miles better than this one for the same entry fee. on the positive side, the staff are very pleasant and the segway looked like fun for youngsters, we did not try it as it was raining heavily on the morning we went !

Visited December 2012

Very disappointing"

Reviewed January 20, 2013 via mobile

We visited the gardens this past week and were very disappointed. The place is poorly laid out and, at least when we went through, relatively little was in bloom or past it's prime (certainly in terms of orchids). **Oh, and if you have any problems with walking through spider webs, good luck. They are everywhere along a good part of the "gardens."**

"MISLEADING! NOT UMAUMA FALLS!"

Reviewed November 15, 2012

this place is a rip off, **they'll charge you \$13 for falls you haven't even heard off and "forget" to mention that you won't see umauma falls..** if you want to see those, stay away. If you go there nonetheless, make them be specific of what exactley they offer..

Was this review helpful? ☒ Yes

"Depends on your expectations"

Reviewed October 19, 2012

I wanted to see this botanical garden and its ok depending on your expectations...there are some pretty plants and flowers to see, some palm trees, and a crazy walk to the "river" to see a waterfall, which isnt worth the long walk in which there really are not clear directions how to get there...i did it but the waterfall was like a notch above a cascading mountain stream type fall not worth the bug bites...the waterfall you to drive to is ok but not really impressive. I saw it all in under 2 hours, i much prefer hawaii tropical botanical gardens along the scenic loop in onomea bay. If you can pick and have 3 to 4 hours choose hawaii botanical gardens. If you have never been to Hawaii and are short on time then this is ok...you are at a botanical garden just dont expect much else.

Visited October 2012

"A complete con"

Reviewed September 19, 2012 via mobile

2

people found this review helpful

The ads looked impressive, but the reality did not live up to them at all. It was a case of: drive up a bumpy road about a mile to see a so-so waterfall, then drive some more to see the "rainforest walk", a mile of unpaved track up a hill lined with a few nice specimen plants, a few labels on dead/dying plants, and a whole lot that you will have seen growing by the roadside already. Below the road is the "6 acres" of tired looking garden which looks like its heyday was in the 1930s, again with some nice specimens, but **altogether looking like the whole thing has seen better days**, including a "maze" that you can see through. If you're there for the segway tour it might be different (about \$1 per minute mind you), but the zip lines we saw looked about the same level that you'd find in a kids' playground. All in all, not impressed. **If you do go, smother yourself in insect repellent, but our advice would be: don't waste your money.**

"very booring"

Reviewed June 21, 2012

2

people found this review helpful

not ran very well very sloppy not much to see i would not recommend this attraction to anyone

Visited June 2012

"Rip-off"

Reviewed May 30, 2012

3

people found this review helpful

Several years ago, we enjoyed visiting this garden which had a beautiful rainforest garden. So, we returned to the garden on our second trip to Hawaii, May 12. This time, the only gardens were behind the office. This area behind the office was nice, but nothing special. After seeing that part of the garden, we drove to the waterfall which is partly obscured by plants growing on the bank at the overlook. The waterfall is ordinary, not worth paying to see. Then, we drove to the "rainforest" which is nothing but a hot one-mile uphill walk. There is nothing to see on this walk. The rainforest that we visited several years was **apparently abandoned. Do not spend your money for this garden.** Go to the Akaka waterfall and the Hawaii Tropical Botanical Garden instead. The gardens do not have a regular bathroom - only portables.

Visited May 2012

"Waste of time."

Reviewed June 23, 2012

3

people found this review helpful

\$13 bucks to wander around someones delapidated garden. Save your money and time. We kept looking for something pretty. **Most of the plants were in bad shape looking very forgotten like Home Depots discard rack for plants.** If you're still curious, just drive in and walk around I think it's run by teenagers and they don't seem to care. Employee cars were parked in part of the garden. Tacky. They were friendly enough though.

Just go for a walk to Akaka Falls or simply find a hiking trail and your experience will be many times better and you'll see all the same things but they will be healthy looking and in a natural setting.

Visited June 2012

"Total rip off"

Reviewed June 28, 2012 via mobile

2

people found this review helpful

Total rip off! Trust me not worth it there guides suck! Talking about parties n drinking the night before! Poor management poor gardens

"Wish I had gone to Hawaiian instead."

Reviewed April 23, 2012

2

people found this review helpful

This place has some pretty stuff. You get to walk by the river and see a waterfall or two. I think another garden would have been more interesting though. No toilets except porta ones. **Lots of spider webs to walk through (ick!).** Make sure you bring lots of mosquito spray if you walk by the river.

Visited April 2012

"Just another place to see plants"

Reviewed February 29, 2012

1

person found this review helpful

other botanical gardens have better viewing and plant presentations. Not a very good value

"A rip-off"

Reviewed February 16, 2012

3

people found this review helpful

We also went there expecting to see Umauma Falls. Once we paid \$13 a piece we learned they had leased the Falls property to a Zip-line up the road and we weren't allowed to go there. The hedge maze was kind of nice.

"Port o pots but no Umauma Falls."

Reviewed February 6, 2012

3

people found this review helpful

Skip this one, although their website makes you think it is worth the \$13/person, it isn't. **After we bought our ticket, we discovered the Umauma Falls is no longer included;** that'll cost you an additional \$12/person. **It appeared like this place was either going out of business or just starting over;** worth \$5/person at the most in its current condition. No bathrooms, just 3 port o pots full of flying/biting insects. The fact that there were no other cars or tour buses in the lot should have been our first clue. Tip: **Grab a stick and hold it in front of your head to help keep the spider webs away** if you attempt the river walk, and wear bug repellent.

Visited January 2012

"Just be aware that Umauma Falls is not included in the basic entrance fee anymore"

Reviewed August 13, 2011

2

people found this review helpful

Previously this was a favorite place to recommend, due to the World Botanical Garden and the beautiful Umauma Falls. We were very disappointed when we last visited, because **we learned that Umauma Falls is no longer included in the basic entrance fee to the Botanical Gardens**. Make sure that if you are planning to specifically view Umauma Falls, you know beforehand that you will need to pay an additional fee.

Visited June 2011

"Not worth the price"

Reviewed August 12, 2011

5

people found this review helpful

This "garden" - while mildly interesting - was not much of a attraction. The "walk" up a small valley was **badly maintained** and of no botanic value, other than a few species labeled among the jungle. The Main garden was well labeled, but not exceptional, unusual or high quality. The price per person was out of proportion to the value of the experience.

Visited August 2011

"This place is a scam."

Reviewed March 24, 2011

9

people found this review helpful

The name "World Botanical Gardens & Waterfalls" is very close to the "Hawaii Tropical Botanical Garden," (htbc.com). We drove all the way to the World Botanical, thinking that this was the great botanical attraction in the Hilo area. We paid \$13/person, and found the garden to be sparsely landscaped. The maze was neat, but everything else was underwhelming. I believe that this place named itself close to the Hawaii Tropical Botanical Garden, to suck in confused people like us. BTW--The Hawaii Tropical is amazing and a must see, and it is closer to Hilo.

Visited March 2011

My husband and I went last week and were very disappointed..."

Reviewed August 18, 2010 via mobile

4

people found this review helpful

My husband and I went last week and were very disappointed. Umauma falls is no longer part of the gardens, it's under a new zip line company called the umauma experience. The falls that are part of the actual gardens are nice but don't compare to Akaka. We took the rainforest hike and it felt like **many plants were dying** and they weren't well marked. Zip isle is part of the park but we opted not to pay \$150 each and

after seeing the zip lines we were so glad we didn't. We were tired and **bug bitten** so we didn't walk around the gardens for long. They were ok, but we wished we'd saved our \$13 plus \$6 for umauma falls (also not worth the hassle and money) and gone elsewhere

"Save your time & money"

Reviewed January 22, 2010

2

people found this review helpful

Really not worth it. Not well-organized, and relatively few WOW sights. Go to the nearby Tropical Gardens. Much, much, much better!

"A Rip-Off indeed"

Reviewed August 28, 2008

4

people found this review helpful

The only thing worth seeing at this place is the Umauma Falls and even after seeing it, we had a hard time figuring out if it truly was worth the time, money, and effort.

"Rip-off!"

Reviewed March 13, 2008

5

people found this review helpful

We went here per the recommendation of a Fodor's pocket guide. It is a huge rip-off. They charge \$13 per person to see this place and yes it is a work in progress.

"Terrible"

Reviewed January 22, 2010

1

person found this review helpful

Si votre volonté principale est de **vous battre avec les toiles d'araignées de ces jardins non-entretenus** et de chercher un sens réel à cet endroit ; c'est parfait pour vous !

(Translation: If your main desire is to **fight with the cobwebs** of these **non-maintained gardens**, and to seek the true meaning of this place, this is perfect for you!)